

**House Committee on Resources**  
**Subcommittee on National Parks, Recreation, and Public Lands**  
**Hearing on the effects of Washington Aqueduct sediment and pollutants**  
**on the endangered shortnose sturgeon and the C&O Canal National Historic Park**  
**October 30, 2001 \* 10:00 AM - 12:15 PM \* Rayburn House Office Building, Room 2322**

**Members Attending**

Rep. George Radanovich (R-CA)  
Del. Donna Christian-Christensen (D-VI)  
Rep. Dale Kildee (D-MI)  
Rep. Betty McCollum (D-MN)

**Witnesses**

Mr. John Parsons, Associate Regional Director for Lands, Resources, and Planning, National Capital Region, National Park Service  
Dr. William Hogarth, Assistant Administrator for Fisheries and Director, National Marine Fisheries Service (NMFS)  
Ms. Patricia Gleason, Region 3, Environmental Protection Agency  
Colonel Charles J. Fiala, Jr., Commander and District Engineer, Baltimore District, U.S. Army Corps of Engineers  
Mr. Rob Gordon, Executive Director, National Wilderness Institute (NWI)  
Mr. Leesh, private citizen and recreational fishermen

**Opening Remarks**

Chair Radanovich opened the hearing by stating that the purpose of the hearing was to discuss the equal application of the Organic Act, Endangered Species Act (ESA) and the Clean Water Act (CWA). He asked how the Federal agencies could allow such a discharge into the Potomac River, as it is a Heritage River in a national park, and the endangered shortnose sturgeon is there. He noted that this would not be tolerated in the west, in a place such as Yosemite National Park. He noted that in the west, Interior shut off the water in the Klamath to protect the suckerfish. Del. Christensen stated that she shared concerns over the park and the sturgeon but noted that the Subcommittee did not have any jurisdiction over several of the Federal agencies present, or over the ESA. Kildee and McCollum did not make opening remarks.

**Statements**

Parsons reviewed the history of the C&O Canal and construction of the Washington Aqueduct. Dr. Hogarth reviewed the presence and absence of shortnose sturgeon in the area and the agency's studies and consultations on the species. Ms. Gleason reviewed the permits that the Aqueduct operates under and assured the Committee that it complies with drinking water standards and ESA requirements. She noted a new report being done on the Aqueduct. Col. Fiala underscored the importance of providing water to the D.C. area, and noted that the Corps takes its permit responsibilities seriously. Mr. Gordon said that the Federal agencies are ignoring the fact that there are unacceptably high levels of aluminum in the discharge that exceed

standards. He said that the existing studies were flawed. Mr. Leesh said he is on the river every day and sees that the discharge affects all feeding, migrating, and spawning by species; and despoils the area for human use.

### **Qs and As**

There were many questions from Chair Radanovich to the Federal agencies about the discharge - what it contained and whether those levels were acceptable and within the limits of the permit, where and when the plume occurred, and what studies were done. The agencies assured Radanovich that the discharge was within permitted levels and all appropriate actions were being taken.

Chair Radanovich asked NMFS what consultations have been conducted since the ESA listing of the sturgeon. Dr. Hogarth replied that in 1998, NMFS began consultations under the ESA, and in 2000 a Memorandum of Agreement was done to improve CWA coordination. Chair Radanovich asked for clarity on where the sturgeon was, and about the spawning areas. Dr. Hogarth clarified that the Little Falls area would be very good spawning habitat, and said that a few sturgeon were found 55 miles below the Aqueduct. Chair Radanovich asked Dr. Hogarth whether he thought the discharge was negatively affecting the sturgeon and Dr. Hogarth replied that NMFS did not have enough data. NMFS would review the new report and would do a formal biological opinion on the Aqueduct, if warranted. Chair Radanovich stated several times that a formal consultation should have already occurred. Dr. Hogarth explained that NMFS addressed the main threat to the species - recreational and commercial fishing - by prohibiting those activities. Now, the agency will investigate the potential effects of the discharge. Chair Radanovich made several heated remarks that the Federal agencies would not take this approach on the West Coast, and that the ESA was being applied unevenly. He noted that there were three lives lost in a California as a dam could not be repaired because of an ESA species and the water was shut off in the Klamath basin because of an ESA species. Dr. Hogarth outlined how the sturgeon situation was different, and that the agency implements the ESA evenly. Radanovich disagreed and stated that NMFS selectively enforces the ESA in California.

Del. Christensen asked NMFS if the ESA consultation would clear up questions on recovery periods for sturgeon. Dr. Hogarth agreed that the consultation could give us an indication of what factors are impacting the species in the Chesapeake Bay and Potomac River, and why their recovery there is slower than other areas. November 1, 2001. Del. Christensen noted that this looked like an example of good cooperation between the Federal agencies. Rep. Kildee asked Corps about the other alternatives available, and Corps outlined the pros and cons of two options - operating a new dewatering facility and landfill, or moving the discharge to another processing plant. Rep. McCollum asked questions about the high chlorine levels, the impact of the appearance of the discharge to park visitors, and impacts to the fish. Throughout the Q and A period, Members asked questions of Mr. Gordon, and he contributed information about the NWI lawsuit, studies that showed unacceptable levels of pollutants, and complaints about the discharge.

Chair Radanovich's assessment at the end of the hearing was that within the Capital Beltway, there is a large disregard for the ESA.